THE HIGH COURT OF TRIPURA
AGARTALA

W.P. (C) 169 of 2015

Narendra Chandra Das,
Son of Lt. Mahendra Ch. Das,
Village & PO. Maracherra, Kamalpur,
District Dhalai, PIN – 799285.

……..… *Petitioner*

- Vs. –

1. The State of Tripura,
   To be represented by the Principal Secretary,
   Department of Education,
   Government of Tripura, New Secretariat Complex,
   P.S. New Capital Complex, P.O. Kunjaban,
   Agartala, West Tripura, PIN - 799006.

2. The Director of School Education,
   Government of Tripura,
   Akhaura Road, Agartala, West Tripura,
   PIN – 799001.

3. The Inspector of Schools,
   Kamalpur, Dhalai,
   PIN – 799285.

……..… *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S.C. DAS

For the Petitioner	**:**	Mr. P. Roy Barman, Advocate. Mr. P. Maishan, Advocate.
For the respondents	**:**	Mr. S. Chakraborty, Addl. GA.
Date of hearing & delivery of Judgment & order	**:**	26.08.2015.
Whether fit for reporting	**:**	No.

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ.)

By means of this petition, the petitioner has prayed for quashing the letter dated 05.11.2011 issued by the Inspector of Schools, Kamalpur, Dhalai whereby the amount of his gratuity and leave encashment has been withheld and not paid to him.

2. The facts leading to the filing of the case are that the petitioner was an employee of the Government of Tripura in the Education Department. He joined as Assistant Teacher in the year 1985 and retired as Head Master, Primary Section after extension of service on 31.12.2011. According to him, his gratuity and leave encashment have been withheld illegally by the Department. The stand of the Department is that pension is being paid regularly to the petitioner and even his gratuity and leave encashment have been sanctioned but the same has not been released. The ground for non-release of the gratuity and leave encashment is that the petitioner had stood guarantee for repayment of loan by a third party which loan amount was advanced to that third party by the Tripura Scheduled Castes Cooperative Development Corporation Ltd. According to the averments made in the reply, the General Manager of the Tripura Scheduled Castes Cooperative Development Corporation Ltd. requested the Inspector of Schools, Kamalpur to deduct Rs.5,000/- per month from the monthly salary of Sri Narendra Chandra Das till the entire amount is paid.

However, this letter was issued on 25.10.2011 much after the petitioner had retired. It would also be pertinent to mention that the so-called loan was advanced in the year 1996. The Schedule Caste Corporation is a totally separate juristic entity. The amount payable to the Corporation has to be ascertained by law. Nothing has been placed on record to show that any certificate proceedings or decree has been obtained for recovery of the said amount.

3. Assuming that the petitioner had stood guarantee and was liable to pay any amount to the Scheduled Castes Corporation, the question that arises is whether the State employer had any authority to withhold the gratuity and leave encashment of an employee.

4. As far as gratuity is concerned, the law in this regard is absolutely clear Rule 9(1) of the CCS Pension Rules reads as follows:-

> ***"9.(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:***
>
> ***Provided that the Union Public Service Commission shall be consulted before any final orders are passed:***
>
> ***Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of (Rupees Three thousand five hundred) per mensem."***

5. Pension or gratuity can only be withheld if circumstances contemplated under Rule 9 exist. It is only if in any departmental or judicial proceedings that the pensioner is found guilty of grave misconduct or negligence during the period of his service that his retiral benefits can be withheld. In this case, there are no judicial or departmental proceedings pending against the petitioner. Even if the case of the State is accepted to be correct, there is no misconduct of the petitioner in so far as the services with the State are concerned. The employee may be liable under law to pay the amount for which he had stood guarantee but if any proceedings are initiated against him he has a right to raise many objections including the objection that the recovery has become time barred since admittedly in this case, the loan was advanced in the year 1996 and no material has been placed on record to show that proceedings have been initiated to recover the amount.

6. As far as leave encashment is concerned, Rule 39(3) of the CCS Leave Rules reads as follows:-

> ***"39(3). The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."***

7. This language of this Rule is similar to the language of 9(1) of the CCS Pension Rules and we are of the considered view that keeping in view the language of Rule 39(3) unless there are disciplinary or criminal proceedings pending against the employee wherein some amount is recoverable from him, the amount cannot be withheld. Furthermore, we are clearly of the view that the amount should be recoverable by the Department and not by any third authority. In this view of the matter, we are clearly of the view that the respondents have illegally and arbitrarily withheld the amount of gratuity and leave encashment.

8. We, therefore, allow the writ petition and direct the respondent to pay the entire amount of gratuity and leave encashment to the petitioner along with interest @ 9% per annum from the date of his retirement i.e. 31.12.2011 till payment/deposit of the amount on or before 30th November, 2015. In case, the amount is not paid by 30th November then the interest shall be payable @ 12% per annum, from 31.12.2011. No costs.

JUDGE **CHIEF JUSTICE**

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